



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 19, 42, and 52**

**[FAR Case 2018-003; Docket No. 2018-0005, Sequence No. 1]**

**RIN 9000-AN61**

**Federal Acquisition Regulation: Credit for Lower-Tier Small Business Subcontracting**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2014 and regulatory changes made by the Small Business Administration (SBA).

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2018-003 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2018-003". Select the link "Comment Now" that corresponds with "FAR Case 2018-003". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2018-003" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR Case 2018-003", in all correspondence related to this case. All comments received will be posted without change to [http:// www.regulations.gov](http://www.regulations.gov), including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marilyn Chambers, Procurement Analyst, at 202-285-7380 for clarification of content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR Case 2018-003".

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are proposing to revise the Federal Acquisition Regulation (FAR) to implement section 1614 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (Pub. L. 113-66), as implemented by the Small Business Administration (SBA) in their final rule published in the Federal Register on December 23, 2016, at 81 FR 94246. SBA's final rule and section 1614 address credit for lower-tier small business subcontracting.

Section 1614 of the NDAA for FY 2014 amended the Small Business Act to provide that, where a prime contractor has an individual subcontracting plan for a contract with a single executive agency, the prime contractor shall receive credit towards its subcontracting goals for awards made to small business concerns at any tier by subcontractors with individual subcontracting plans. In addition, section 1614 also provided new assurances for offerors to include in subcontracting plans. The new assurances relate to activities to be performed by the contractor to monitor the performance of subcontractors with regard to subcontracting plans, and by subcontractors to monitor the performance of

their subcontractors with regard to subcontracting plans. Section 1614 requires the contractor to demonstrate procedures established to ensure subcontractors at all tiers comply with their subcontracting plans. Section 1614 also revised the definition of "subcontract" in the Small Business Act.

SBA's final rule requires a prime contractor with an individual subcontracting plan to receive subcontracting credit for subcontracts awarded to small business concerns at any tier by subcontractors with individual subcontracting plans. Further, the changes require the prime contractor to have two sets of goals in its individual subcontracting plan: one set of goals includes the prime contractor's direct subcontract awards (i.e., the first-tier goals), while the second set of goals includes subcontracts awarded at any tier by other than small business subcontractors with individual subcontracting plans (i.e., lower-tier goals). The purpose of the lower-tier goals is to ensure maximum practicable opportunity for small business concerns at the prime contractor's first tier, as well as at all lower tiers, in the performance of the contract. This requirement to have two sets of subcontracting goals applies only to the prime contractor's

individual subcontracting plan and does not apply to subcontractors' subcontracting plans.

Per SBA's final rule, the prime contractor's performance under the individual subcontracting plan must be evaluated based on its combined performance under the first-tier and lower-tier goals. In addition, the final rule implemented the statutory requirements related to the new assurances and written statement to be included in subcontracting plans.

The FAR currently requires other than small businesses with subcontracts valued over \$700,000 (\$1.5 million for construction) to have subcontracting plans and to report their subcontracting achievements in the Electronic Subcontracting Reporting System (eSRS). DoD, GSA, and NASA propose to use these existing subcontracting reports in eSRS as a way for the prime contractor to monitor subcontractors' achievements.

## **II. Discussion and Analysis**

A. The proposed changes to the FAR are summarized in the following paragraphs.

1. Subpart 19.7, The Small Business Subcontracting Program. This subpart is amended to update the definition of subcontract and add definitions of first-tier and lower-tier subcontracts. The existing text at FAR 19.704 is

reorganized to group together basic requirements for all subcontracting plans, special requirements for commercial plans, special requirements for individual subcontracting plans, and special requirements for master subcontracting plans. Existing text regarding the requirements for the current (i.e., first-tier) goals is revised for clarity, but the requirements are unchanged. Text is added concerning the new assurances related to monitoring the performance of subcontractors with regard to subcontracting plans, and the written statement regarding the contractor's records to demonstrate procedures adopted to ensure subcontractors at all tiers comply with their subcontracting plans. A new paragraph (d) entitled "Special requirements for individual subcontracting plans" is added to address existing and new requirements specific to individual plans. This paragraph covers existing requirements such as individual subcontract reports in eSRS, as well as the new requirements related to lower-tier goals.

2. Subpart 42.15, Contractor Performance Information. This subpart is amended to include an additional element for the contracting officer to consider when assessing the contractor's combined performance under the first-tier and lower-tier subcontracting goals.

3. Subpart 52.2, Text of Provisions and Clauses.

This rule proposes to amend the following contract clauses:

- 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is amended to revise the dates of 52.219-9, Small Business Subcontracting Plan, and its Alternates.

- 52.219-9, Small Business Subcontracting Plan, is amended to update the definition of subcontract, to add definitions of first-tier and lower-tier subcontracts, to add the new assurances at 52.219-9(d)(9), and to add a written statement at 52.219-9(d)(12) to be included in the subcontracting plan. Paragraphs (d)(1) and (2) of 52.219-9 are combined for clarity. Further, this clause is amended to insert a new paragraph (e) applicable only to individual subcontracting plans that require the inclusion of separate goals for subcontracting at the lower tiers. The new paragraph addresses the requirement to have lower-tier goals; it also gives information on receiving credit toward those goals. In addition, a new paragraph (m) is added to provide guidance to contractors regarding when and how to include the clause in subcontracts. Conforming and editorial changes are made to the alternates for FAR 52.219-9.

B. In addition to comments on the revisions described sections A. 1. through 3. of this preamble, DoD, GSA, and NASA invite input on the following:

- To minimize public burden, the Government intends to use Individual Subcontract Reports (ISRs) submitted in eSRS by subcontractors with individual subcontracting plans to calculate a prime contractor's achievement for the lower-tier goals. Therefore, this proposed rule does not require any additional action by the prime contractor in eSRS to approve or acknowledge achievement for the lower-tier goals. If the lower-tier subcontractors do not submit ISRs in eSRS, this could impact the prime contractor's achievement toward the lower-tier goals, which could impact the evaluation of the prime contractor's performance rating when their combined performance is assessed under the first-tier and lower-tier subcontracting goals under FAR subpart 42.15, Contractor Performance Information. This potential outcome is no different than what could happen under current regulation, as the FAR currently requires an assessment of the prime contractor's performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9.



- o Do prime contractors want or need to approve or acknowledge achievement for the lower-tier goals in eSRS?

- o If so, what is the benefit of such an approval or acknowledgement in eSRS?

- o If so, how much time should prime contractors have to approve or acknowledge the achievements?

- What non-proprietary data would prime contractors need to see in eSRS in order to monitor achievement for their lower-tier goals?

- Would a mandatory lower-tier goal inadvertently encourage more subcontracting at the first tier to other than small businesses, who would subcontract to small businesses, in order to meet the lower-tier goal?

- What alternative processes or methodologies, permitting prime contractors to take credit for subcontracts awarded to small business at tiers below the first tier, would be more efficient for prime contractors to manage?

### **III. Applicability to Contracts at or below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items**

DoD, GSA, and NASA do not intend to apply the requirements of section 1614 of the NDAA for FY 2014 to contracts at or below the simplified acquisition threshold

(SAT), and except for the new definitions, do not intend to apply the requirements to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items. The clause at FAR 52.219-9 is prescribed for use in solicitations and contracts that are expected to exceed \$700,000 (\$1.5 million for construction of any public facility); this threshold is above the SAT. The proposed revisions on lower-tier subcontract goals do not apply to contracts using FAR clause 52.212-5, which provides the statutory terms and conditions that apply to commercial items (see the proposed text at 52.219-9(e) and (m)).

#### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866,

Regulatory Planning and Review, dated September 30, 1993.

This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This proposed rule is not expected to be an E.O. 13771 regulatory action, because this proposed rule is not significant under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the requirements of this rule apply to other than small entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to implement section 1614 of the NDAA for FY 2014, as implemented in the SBA regulations on December 23, 2016 at 81 FR 94246. Section 1614 requires prime contractors to receive small business subcontracting credit for subcontracts that their other than small business subcontractors award to small businesses, adds an assurance in subcontracting plans for approval and monitoring of subcontracting plans by the offeror and all subcontractors required to maintain subcontracting plans, and requires a written statement of the records the offeror will maintain to ensure compliance with the subcontracting plan at the lower tiers.

The objectives of this proposed rule are to implement statutory requirements. The authorizing legislation for this action is section 1614 of the NDAA for FY 2014.

This rule may have a positive economic impact on any small business entity that wishes to participate in Federal procurement as a subcontractor. Small businesses may see

increased opportunities to compete for subcontracts, as prime contractors encourage their first-tier subcontractors who are other than small to improve their performance in support of the prime contractor's lower-tier goals. This potential increase in opportunities may increase the overall number of subcontracts awarded to small businesses. According to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS), there are 19,596 unique entities who are subcontractors. Approximately 80 percent of the entities registered in the System for Award Management are small entities. Therefore, we estimate that 80 percent (15,677) of the subcontractors in FSRS are small entities. These small entities may benefit from this rule.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives which would accomplish the stated objectives of the applicable statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018-003), in correspondence.

## **VII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies as this proposed rule contains information collection requirements. Office of Management and Budget control number 9000-0007, Subcontracting Plans, will be revised to reflect the additional burden imposed by the proposed rule.

With this proposed rule, the public reporting burden for this collection is expected to increase from an average of 5 hours to 5.25 hours per response for subcontracting plans with first-tier subcontracting goals. The increase of 0.25 hour per response is to account for the additional assurances the offeror or contractor must provide in the subcontracting plan.

Plans that also require lower-tier subcontracting goals are estimated to take an additional 2 hours per response. The 2 hour estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and establishing the lower-tier subcontracting goals through negotiations with the contracting officer.

Based on this proposed rule, the revised annual reporting burden has been estimated as follows:

Commercial plan:

Respondents 542

Responses per respondent 1

Total annual responses 542

Hours per response 5.25 hrs

Response burden hours 2,846

Individual plan:

Respondents 3,808

Responses per respondent 1

Total annual responses 3,808

Hours per response 5.25 hrs

Response burden hours 19,992 hrs

Individual plan with lower-tier goals:

Respondents 2,970

Responses per respondent 1

Total annual responses 2,970

Hours per response 2 hrs

Response burden hours 5,940 hrs

As part of this proposed rulemaking, the FAR Council is soliciting comments from the public in order to:

Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;

Evaluate the accuracy of the FAR Council's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments not later than **[insert date 60 days after publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB). The copy to GSA can be submitted by either of the following methods:

- Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.

- Mail: General Services Administration,  
Regulatory Secretariat Division (MVCB), 1800 F Street NW,  
2nd Floor, Washington, DC 20405. ATTN: Lois Mandell/IC  
9000-0007, Subcontracting Plans.

Instructions: All items submitted must cite  
Information Collection 9000-0007, Subcontracting Plans.  
Comments received generally will be posted without change  
to <http://www.regulations.gov>, including any personal  
and/or business confidential information provided. To  
confirm receipt of your comment(s), please check  
[www.regulations.gov](http://www.regulations.gov), approximately two to three days after  
submission to verify posting (except allow 30 days for  
posting of comments submitted by mail).

**List of Subjects in 48 CFR Parts 19, 42, and 52**

Government procurement.

Dated: June 10, 2019

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.



Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 19, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 19, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### **PART 19—SMALL BUSINESS PROGRAMS**

2. Amend section 19.701 by adding in alphabetical order the definitions of "First-tier subcontract" and "Lower-tier subcontract" and revising the definition of "Subcontract" to read as follows:

##### **19.701 Definitions.**

\* \* \* \* \*

First-tier subcontract means any subcontract directly with the prime contractor.

\* \* \* \* \*

Lower-tier subcontract means any subcontract other than a subcontract directly with the prime contractor.

\* \* \* \* \*

Subcontract means a legally binding agreement—

(1) Between a contractor, that is under contract to another party to perform work, and a third party (i.e., the subcontractor);

(2) For the subcontractor to perform a part of the work that the contractor has undertaken; and

(3) That is not an employer-employee relationship.

\* \* \* \* \*

3. Revise section 19.704 to read as follows:

**19.704 Subcontracting plan requirements.**

(a) General. When determining whether a subcontracting plan is necessary, consider the cumulative value of the basic contract and all options for multiyear contracts or contracts containing options.

(b) Basic requirements. Each subcontracting plan under 19.301-2(e) and 19.702(a)(1), (2), and (3) shall include the following:

(1) The total planned subcontracting dollars for the subcontracting plan.

(2) Separate goals expressed as dollars and as a percentage of total planned subcontracting dollars for each of the following categories:

(i) Small business concerns (including ANCs and Indian tribes).

(ii) Veteran-owned small business concerns.

(iii) Service-disabled veteran-owned small business concerns.

(iv) HUBZone small business concerns.

(v) Small disadvantaged business concerns (including ANCs and Indian tribes).

(vi) Women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types of supplies or services planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals.

(5) A description of the method used to identify potential sources for solicitation purposes.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns.

(7) The name of an individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to ensure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan (see 19.708(b)).

(10) Assurances at a minimum that the offeror, and all subcontractors required to maintain subcontracting plans, will—

(i) Review and approve subcontracting plans submitted by their subcontractors;

(ii) Monitor their subcontractors' compliance with their approved subcontracting plans;

(iii) Ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) Acknowledge receipt of their subcontractors' reports;

(v) Compare the performance of their subcontractors to their subcontracting plans and goals; and

(vi) Discuss performance with their subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans. See 13 CFR 125.3(d)(3) for examples of good faith effort.

(11) Assurances that the offeror will do the following:

(i) Cooperate in any studies or surveys as may be required.

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan.

(iii) Submit the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<https://www.esrs.gov>), following the instructions in the eSRS. The SSR shall be submitted annually by

October 30 for the twelve-month period ending September 30. When an SSR is rejected, the contractor is required to submit a revised SSR within 30 days of receiving the notice of SSR rejection.

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SSR using the eSRS.

(12) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(13) A written statement of the types of records the offeror will maintain to demonstrate procedures that have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the subcontracting plan established in accordance with paragraph (b) of this section, including—

(i) The establishment of source lists of small business concerns, veteran-owned small business concerns,

service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(ii) The efforts to identify and award subcontracts to such small business concerns; and

(iii) The size or socioeconomic certifications or representations received in connection with each subcontract.

(14) Assurances that the offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that the offeror used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. An offeror used a small business concern in preparing the bid or proposal if—

(i) The offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the contract; or

(ii) The offeror used the small business concern's pricing or cost information or technical

expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the offeror is awarded the contract.

(15) Assurances that the contractor will provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in paragraph (b)(14) of this section. This written explanation will be submitted to the contracting officer within 30 days of contract completion.

(16) Assurances that the contractor will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor.

(17) Assurances that the contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the subcontract, and notify the contracting officer if the contractor pays a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(c) Special requirements for commercial plans. A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing



commercial items. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.

(1) The commercial plan shall include the total projected sales, expressed in dollars.

(2) Total planned subcontracting dollars (see paragraph (b)(1) of this section) is equal to the total value of projected subcontracts to support the sales for a commercial plan.

(3) The contractor shall—

(i) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period;

(ii) Submit a new commercial plan, 30 working days before the end of the contractor's fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(iii) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(iv) Comply with the reporting requirements stated in paragraph (b) (11) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government's fiscal year.

(d) Special requirements for individual subcontracting plans. (1) Base and option periods. In addition to the elements required by paragraph (b) of this section, an individual subcontracting plan shall contain

separate statements and goals based on total subcontract dollars for the base period and for each option.

(2) Lower-tier goals. (i) Additional separate goals shall be expressed as dollars and as a percentage of total planned subcontracting dollars for subcontracts at lower tiers awarded by other than small business subcontractors with individual subcontracting plans, for each of the categories in paragraph (b)(2) of this section.

(ii) These goals are not required in individual subcontracting plans for—

(A) Contracts intended for use by multiple executive agencies; or

(B) Contracts that include the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(3) Percentage of total contract dollars. A contracting officer may require the goals referenced in paragraph (b)(2) of this section to be calculated as a percentage of total contract dollars, in addition to the goals established as a percentage of total planned subcontracting dollars.

(4) Reporting in eSRS. The individual subcontracting plan shall include contractor assurances regarding the following:

(i) Compliance with the reporting requirements stated in paragraph (b) (11) of this section by submission in eSRS of one SSR for each agency.

(ii) Submission of the Individual Subcontract Report (ISR), using eSRS, semiannually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When a contracting officer rejects an ISR, the contractor is required to submit a revised ISR within 30 days of receiving the notice of the ISR rejection.

(iii) Include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts where the contract is intended for use by multiple agencies.

(iv) Ensuring that its subcontractors with subcontracting plans agree to submit the ISR using the eSRS.

(v) Providing its prime contract number, its unique entity identifier, and the email address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs.

(vi) Requiring that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(e) Special requirements for master subcontracting plans. Contractors may establish, on a plant or division-wide basis, a master subcontracting plan (see 19.701) that contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, except goals. Master subcontracting plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master subcontracting plans. Changes required to update master subcontracting plans are not effective until approved by the contracting officer. A master subcontracting plan, when incorporated in an individual

plan, shall apply to that contract throughout the life of the contract.

**19.705-4 [Amended]**

4. Amend section 19.705-4 by—

a. In paragraph (b) removing “15”; and

b. In paragraph (c) removing “the 15 elements” and adding “the required elements” in its place.

5. Amend section 19.705-6 by revising paragraph

(f)(2) to read as follows:

**19.705-6 Postaward responsibilities of the contracting officer.**

\* \* \* \* \*

(f) \* \* \*

(2) Review ISRs, SSRs, and where applicable, additional standard reports, in eSRS within 60 days of the report ending date (e.g., by November 30th for a report submitted for the fiscal year ended September 30th).

\* \* \* \* \*

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

6. Amend section 42.1501 by redesignating paragraphs

(a)(5) through (a)(7) as paragraph (a)(6) through (a)(8);

and adding a new paragraph (a)(5) to read as follows:

**42.1501 General**

(a) \* \* \*

(5) Good faith effort to comply with the requirements of the small business subcontracting plan (see 19.705-7(d)). See 13 CFR 125.3(d)(3) for examples of good faith effort;

\* \* \* \* \*

7. Amend section 42.1503 by-

a. Revising paragraph (b)(2)(v); and

b. In the Table 42-2, under the heading "Evaluation Ratings Definitions [For the small business subcontracting evaluation factor, when 52.219-9 is used]" by-

i. Removing from the entry for (a) Exceptional, in the first sentence of the "Definition" column, "goals as negotiated" and adding "goals as negotiated, including lower-tier goals as applicable" in its place;

ii. Removing from the entry for (b) Very Good, in the first sentence of the "Definition" column, "goals as negotiated" and adding "goals as negotiated, including lower-tier goals as applicable" in its place;

iii. Removing from the entry for (c) Satisfactory, in the first sentence of the "Definition" column, "subcontracting goals" and adding "subcontracting goals, including lower-tier goals as applicable," in its place;

iv. Removing from the entry for (d) Marginal, in the first sentence of the "Definition" column, "plan elements" and adding "plan elements, including lower-tier goals as applicable," in its place; and

v. Removing from the entry for (e) Unsatisfactory, in the first sentence of the "Definition" column, "contract/order" and adding "contract/order, including lower-tier goals as applicable," in its place.

The revision reads as follows.

**42.1503 Procedures.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) Small business subcontracting, including—

(A) For an individual subcontracting plan that includes lower-tier goals, the contractor's combined performance under the first-tier and lower-tier goals; and

(B) Reduced or untimely payments to small business subcontractors when 19.702(a) requires a subcontracting plan (as applicable, see Table 42-2).

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

8. Amend section 52.212-5 by—

a. Revising the date of the clause;



b. Amending paragraph (b) by—

i. Removing from paragraph (b)(17)(i) "(AUG 2018)" and adding "([DATE])" in its place;

ii. Removing from paragraph (b)(17)(ii) "(NOV 2016)" and adding "([DATE])" in its place;

iii. Removing from paragraph (b)(17)(iii) "(NOV 2016)" and adding "([DATE])" in its place;

iv. Removing from paragraph (b)(17)(iv) "(NOV 2016)" and adding "([DATE])" in its place; and

v. Removing from paragraph (b)(17)(v) "(AUG 2018)" and adding "([DATE])" in its place.

The revisions read as follows:

**52.212-5 Contract Terms and Conditions Required To  
Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE  
ORDERS—COMMERCIAL ITEMS ([DATE])

\* \* \* \* \*

9. Amend section 52.219-9 by—

a. Revising the date of the clause;

b. Adding in paragraph (b) in alphabetical order,  
the definitions "First-tier subcontract" and "Lower-tier  
subcontract";

c. Revising the definition "Subcontract";

- d. Revising the third sentence of paragraph (c) (1);
- e. Revising paragraphs (d) (1) through (d) (9);
- f. In paragraph (d) (10) (iii) removing "After November 30, 2017, include" and adding "Include" in its place;
- g. In paragraph (d) (11) removing "offeror's efforts" and adding "Offeror's efforts" in its place;
- h. In paragraph (d) (11) (vi) removing "offeror" and adding "Offeror" in its place;
- i. Redesignating paragraphs (d) (12) through (d) (15) as paragraphs (d) (13) through (d) (16);
- j. Adding a new paragraph (d) (12);
- k. In newly redesignated paragraph (d) (14) removing "(d) (12)" and adding "(d) (13)" in its place;
- l. Revising newly redesignated paragraph (d) (16);
- m. Remove paragraph (j);
- n. Redesignate paragraph (i) as paragraph (j);
- o. Redesignate paragraphs (e) through (h) as paragraphs (f) through (i);
- p. Add a new paragraph (e);
- q. In newly redesignated paragraph (f) (4) removing "with 52.219-8(d) (2)" and adding "with FAR 52.219-8(d) (5)" in its place;
- r. Revising newly redesignated paragraph (h);

- s. In newly redesignated paragraph (i) removing "offeror" where it appears and adding "Offeror" in its places;
- t. Revising the fifth sentence of the introductory paragraph of paragraph (l);
- u. In paragraph (l)(1)(ii)(A) removing "as prescribed by FAR 19.704(c)" and adding "(see paragraph (c)(1) of this clause)" in its place;
- v. In paragraph (l)(1)(ii)(B) removing "19.702(a)(3) or 19.301-2(e)" and adding "FAR 19.702(a)(3) or 19.301-2(e)" in its place;
- w. In paragraph (l)(2)(ii)(B) removing "within thirty days " and adding "within 30 days" in its place;
- x. Adding a new paragraph (m);
- y. Revising the date of Alternate I and the third sentence of paragraph (c)(1);
- z. Revising the date of Alternate II and the third sentence of paragraph (c)(1);
- aa. Amending Alternate III by—
  - i. Revising the date of Alternate III;
  - ii. Removing from the introductory text "(d)(10) and (l)" and adding "(d)(10), (e), and (l)" in their places;
  - iii. Adding and reserving paragraph (e);

iv. Revising the fifth sentence of the introductory paragraph of paragraph (1);

v. Removing from paragraph (1)(1)(ii)(A) "as prescribed by FAR 19.704(c)" and adding "(see paragraph (c)(1) of this clause) in its place; and

vi. Removing from paragraph (1)(1)(ii)(B) "19.702(a)(3) or 19.301-2(e)" and adding "FAR 19.702(a)(3) or 19.301-2(e)" in its place; and

bb. Amending Alternate IV by-

i. Revising the date of Alternate IV;

ii. Removing from the introductory text "(c) and (d)" and adding "(c), (d) and (e)" in its place;

iii. Revising the third sentence of paragraph (c)(1);

iv. Revising paragraph (d); and

v. Adding a new paragraph (e).

The revisions and additions read as follows:

**52.219-9 Small Business Subcontracting Plan.**

\* \* \* \* \*

SMALL BUSINESS SUBCONTRACTING PLAN ([DATE])

\* \* \* \* \*

(b) \* \* \*

First-tier subcontract means any subcontract directly with the prime contractor.

\* \* \* \* \*

Lower-tier subcontract means any subcontract other than a subcontract directly with the prime contractor.

\* \* \* \* \*

Subcontract means a legally binding agreement—

(1) Between a contractor, that is under contract to another party to perform work, and a third party (i.e., the subcontractor);

(2) For the subcontractor to perform a part of the work that the contractor has undertaken; and

(3) That is not an employer-employee relationship.

\* \* \* \* \*

(c)(1) \* \* \* The Contracting Officer will incorporate the subcontracting plan in the resultant contract.

\* \* \* \* \*

(d) \* \* \*

(1)(i) The total planned subcontracting dollars for an individual subcontracting plan; or total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan.

(ii) Separate goals, expressed as dollars and as a percentage of total planned subcontracting dollars, for each of the following categories:

(A) Small business concerns (including ANCs and Indian tribes).

(B) Veteran-owned small business concerns.

(C) Service-disabled veteran-owned small business concerns.

(D) HUBZone small business concerns.

(E) Small disadvantaged business concerns (including ANCs and Indian tribes).

(F) Women-owned small business concerns.

(iii) For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total planned subcontracting dollars.

(iv) All subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(v) In accordance with 43 U.S.C. 1626—

(A) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for

small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(B) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(1) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(2) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(3) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(4) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns;
- and
- (vi) Women-owned small business concerns.

(3) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(4) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of



Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(5) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANCs and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANCs and Indian tribes); and

(vi) Women-owned small business concerns.

(6) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(7) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(8) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns and when paragraph (m)(2) applies) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(9) Assurances at a minimum that the Offeror, and all subcontractors required to maintain subcontracting plans, will—

(i) Review and approve subcontracting plans submitted by their subcontractors;

(ii) Monitor their subcontractors' compliance with their approved subcontracting plans;

(iii) Ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) Acknowledge receipt of their subcontractors' reports;

(v) Compare the performance of their subcontractors to their subcontracting plans and goals; and

(vi) Discuss performance with their subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans; see 13 CFR 125.3(d)(3) for examples of good faith effort;

\* \* \* \* \*

(12) A written statement of the types of records the Offeror will maintain to demonstrate procedures that have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the

subcontracting plan established in accordance with this clause, including-

(i) The establishment of source lists of small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(ii) The efforts to identify and award subcontracts to such small business concerns; and

(iii) The size or socioeconomic certifications or representations received in connection with each subcontract.

\* \* \* \* \*

(16) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the Contracting Officer when the prime Contractor makes either a reduced or an untimely payment to a small business subcontractor (see the clause at FAR 52.242-5).

(e) The requirements of this paragraph (e) apply to an Offeror's individual subcontracting plan except for contracts intended for use by multiple executive agencies and contracts that include the clause at FAR 52.212-5,

Contract Terms and Conditions Required to Implement  
Statutes or Executive Orders—Commercial Items.

(1) The Offeror's subcontracting plan shall also include separate goals for subcontracts at lower tiers awarded by other than small business subcontractors with individual subcontracting plans—

(i) Expressed as dollars and as a percentage of total planned subcontracting dollars (see paragraph (d)(1)(ii) of this clause), for each of the following categories:

(A) Small business concerns (including ANCs and Indian tribes).

(B) Veteran-owned small business concerns.

(C) Service-disabled veteran-owned small business concerns.

(D) HUBZone small business concerns.

(E) Small disadvantaged business concerns (including ANCs and Indian tribes).

(F) Women-owned small business concerns.

(ii) If required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total planned subcontracting dollars; and

(iii) The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) The Contractor will receive credit towards the goals described in paragraph (e)(1) of this clause for achievements by subcontractors with individual subcontracting plans that are reported via the ISR and acknowledged in eSRS.

\* \* \* \* \*

(h) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. The

SSR shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the commercial plan. The SSR shall be submitted within 30 days after the end of the Government's fiscal year.

\* \* \* \* \*

(1) \* \* \* Subcontract award data shall not include awards made to lower-tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. \* \* \*

\* \* \* \* \*

(m) Subcontracts. (1) The Contractor shall include this clause, except for paragraph (e), in subcontracts that are required to have a subcontracting plan (but see paragraph (m)(2) of this clause). The Contractor shall not further alter this clause other than to identify the appropriate parties.

(2) The Contractor shall not include this clause in subcontracts when—

(i) The contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items; or

(ii) A subcontractor provides a commercial item subject to the clause at FAR 52.244-6, Subcontracts for Commercial Items.

Alternate I ([DATE]). \* \* \*

\* \* \* \*

(c)(1) \* \* \*The Contracting Officer will incorporate the subcontracting plan in the resultant contract. \* \* \*

\* \* \* \*

Alternate II ([DATE]). \* \* \*

\* \* \* \*

(c)(1) \* \* \*The Contracting Officer will incorporate the subcontracting plan in the resultant contract. \* \* \*

\* \* \* \*

Alternate III ([DATE]). \* \* \*

\* \* \* \*

(e) Reserved.

\* \* \* \*

(1) \* \* \* Subcontract award data shall not include awards made to lower-tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. \* \* \*



\* \* \* \* \*

Alternate IV ([DATE]). \* \* \*

\* \* \* \* \*

(c)(1) \* \* \* The Contracting Officer will  
incorporate the subcontracting plan into the contract. \*

\* \*

\* \* \* \* \*

(d) The Contractor's subcontracting plan shall  
include the following:

(1)(i) The total planned subcontracting dollars for  
an individual subcontracting plan; or the Contractor's  
total projected sales, expressed in dollars, and the total  
value of projected subcontracts to support the sales for a  
commercial plan.

(ii) Separate goals, expressed as dollars and as  
a percentage of total planned subcontracting dollars, for  
each of the following categories:

(A) Small business concerns (including ANCs  
and Indian tribes).

(B) Veteran-owned small business concerns.

(C) Service-disabled veteran-owned small  
business concerns.

(D) HUBZone small business concerns.

(E) Small disadvantaged business concerns (including ANCs and Indian tribes).

(F) Women-owned small business concerns.

(iii) For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total planned subcontracting dollars.

(iv) All subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(v) In accordance with 43 U.S.C. 1626—

(A) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(B) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(1) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(2) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(3) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(4) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(3) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(4) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). The Contractor may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(5) A statement as to whether or not the Contractor included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANCs and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANCs and Indian tribes); and

(vi) Women-owned small business concerns.

(6) The name of the individual employed by the Contractor who will administer the Contractor's subcontracting program, and a description of the duties of the individual.

(7) A description of the efforts the Contractor will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(8) Assurances that the Contractor will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns and when paragraph (m)(2) applies) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(9) Assurances at a minimum that the Contractor, and all subcontractors required to maintain subcontracting plans, will—

(i) Review and approve subcontracting plans submitted by their subcontractors;

(ii) Monitor their subcontractors' compliance with their approved subcontracting plans;

(iii) Ensure that subcontracting reports are submitted by subcontractors when required;

(iv) Acknowledge receipt of their subcontractors' reports;

(v) Compare the performance of their subcontractors to their subcontracting plans and goals; and

(vi) Discuss performance with their subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans; see 13 CFR 125.3(d)(3) for examples of good faith effort.

(10) Assurances that the Contractor will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Contractor with the subcontracting plan;

(iii) Include subcontracting data for each order when reporting subcontracting achievements for an indefinite-delivery, indefinite-quantity contract with an individual subcontracting plan where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (1) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <https://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns,

service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the email address of the Contractor's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.



(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Contractor to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) A written statement of the types of records the Contractor will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the subcontracting plan established in accordance with this clause, including—

- (i) The establishment of source lists of small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

- (ii) The efforts to identify and award subcontracts to such small business concerns; and

- (iii) The size or socioeconomic certifications or representations received in connection with each subcontract.

(13) Assurances that the Contractor will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the proposal for the modification, in the same or greater scope, amount, and quality used in preparing and submitting the modification proposal. Responding to a request for a quote does not constitute use in preparing a proposal. The Contractor used a small business concern in preparing the proposal for a modification if-

(i) The Contractor identifies the small business concern as a subcontractor in the proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Contractor used the small business concern's pricing or cost information or technical expertise in preparing the proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work when the modification is executed.

(14) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies,

services or materials or obtain the performance of construction work as described in (d)(13) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(15) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to the payment to or utilization of a subcontractor.

(16) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the Contracting Officer when the prime Contractor makes either a reduced or an untimely payment to a small business subcontractor (see the clause at FAR 52.242-5).

(e) The requirements of this paragraph (e) apply to a Contractor's individual subcontracting plan except for contracts intended for use by multiple executive agencies and contracts that include the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(1) The Contractor's subcontracting plan shall also include separate goals for subcontracts at lower tiers

awarded by other than small business subcontractors with individual subcontracting plans—

(i) Expressed as dollars and as a percentage of total planned subcontracting dollars (see paragraph (d)(1)(ii) of this clause), for each of the following categories:

(A) Small business concerns (including ANCs and Indian tribes).

(B) Veteran-owned small business concerns.

(C) Service-disabled veteran-owned small business concerns.

(D) HUBZone small business concerns.

(E) Small disadvantaged business concerns (including ANCs and Indian tribes).

(F) Women-owned small business concerns.

(ii) If required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total planned subcontracting dollars.

(iii) The Contractor shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) The Contractor will receive credit towards the goals described in paragraph (e)(1) of this clause for achievements by subcontractors with individual subcontracting plans that are reported via the ISR and acknowledged in eSRS.

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